

Abstract of Jan Horník's dissertation
“Criminal law application of corruption and bribery”

This dissertation, as it follows from its title, deals with the issues of corruption and bribery, mainly from the perspective of criminal substantive law. The author emphasises the fact that corruption has been discussed as an adverse social phenomenon which has for a long time constituted an issue of not only national dimension, but has been the object of activities of numerous international or multinational organisations due to its diversity and wide spread. Since the media cover corruption-related cases on an almost-daily basis (and we will leave it to the reader whether or not to believe the saying that *everyone is corruptible, what only matters is the amount of the bribe offered and the circumstances under which it is offered*), the author of this dissertation decided to highlight and explain the aspects related to corruption, and in that context to analyse the applicable laws of the Czech Republic.

The aim of this dissertation is to introduce the reader to the general principles of the law applicable to penalisation of corruption, particularly from the perspective of criminal substantive law, and also from the perspectives of criminology and international law. The dissertation offers a general introduction to corruption and bribery, and a more detailed elaboration on these issues from the point of view of history and the present time. Although there already exist several monographs dealing with the issue of corruption, this dissertation is intended to be of benefit to the professional public as it contains findings of purely theoretical nature as well as practical experience derived from the day-to-day work of an expert who handles these matters on a professional basis.

The author highlights some of the drawbacks of the current legislation, and in particular, the absence of the abolished special provision regarding effective regret (in Czech: *účinná lítost*). The dissertation further describes details of the legislative provisions concerning penalisation of bribery in selected countries, including a summary of the key international covenants that are binding on the Czech Republic. In addition to his comments on the individual aspects of the issue in question, the author also offers his contemplations *de lege ferenda*.

In the introductory part, the author indicates how difficult it is to treat corruption as such, due in particular to the lack of uniformity of definitions on the international scale, which is caused, inter alia, by the diversity of the aspects that may be used in assessing corruption.

The dissertation is comprised of the introduction, the conclusion, and eight chapters, which are structured in relation to the aspects to which each of the chapters is dedicated. The initial chapters deal with the term “corruption” and its relation to bribery; classification of corruption

and selected criminological factors, particularly the causes of corruption; an analysis of data contained in police and judicial statistics; and a comparative analysis of how corruption is perceived in individual countries (including details of the best-known supranational surveys on corruption levels). The next chapter is dedicated to the historical development of the legal instruments in the fight against corruption in the Czech Republic, with a separate chapter dealing with the significantly different legislative approach in the Slovak Republic after the disintegration of Czechoslovakia, i.e. after the two countries amended their respective criminal codes separately. Before the analysis of the applicable Czech laws, the author outlines the importance of the fight against corruption in the documents adopted by international organisations, with a special attention being paid to the Group of States against corruption (GRECO) and the new supranational platform known as the Open Government Partnership, in which the Czech Republic participates.

The core chapter focuses on the bribery-related provisions in the Czech Criminal Code, and on the questions related to bribery. After an analysis of the legislation currently in force (apart from an analysis of the criminal offences of receiving a bribe, giving a bribe, and indirect bribery, including the prison sentences that may be imposed for these offences, the dissertation also contains a detailed analysis of the terms bribe, procurement of items of overriding public interest, and public official), particular attention is paid to the abolished provision on effective regret. The author raises a question whether the purpose of the provision on effective regret can be achieved in any other manner, and is looking for arguments in support of the re-enactment of that provision in Czech law, or arguments refuting the objections against its re-enactment.

In the chapter focusing on questions related to the applicable laws as currently in force, the author included a section dedicated to the criminalisation of corruption in the private sector and lobbying in the context of a specific corruption case; a subchapter pondering on the criminality of the failure to notify the commission of the criminal offence of passive or Active bribery, and a subchapter emphasising the necessity of the existence of statutory provisions regarding the impunity of an agent in relation to corruption. The author also includes sections indicating other areas where corrupt practices are typical and where such practices should be eliminated by adopting new laws, e.g., the law on the protection of informants.

The next chapter is dedicated to a selection of other corruption-based and corruption-related criminal offences. Here, too, the author disputes with the legislators' intent (in the context of the new provision penalising electoral corruption – vote buying), and even criticises the case-law (which precludes concurrence with respect to certain criminal offences, although there are no reasons for that). The assessment of the current status and the search for suitable starting points for a more efficient legal regulation of the substance of criminal offences

related to corruption largely benefit from projecting some of the conclusions drawn from an analysis performed by Transparency International – Czech Republic with respect to court judgments issued between 2007 and 2009 in the cases of bribery into the individual chapters describing the current applicable law.

The penultimate chapter offers an introduction to the anti-corruption laws in selected countries – apart from the neighbouring states (Slovakia, Germany, Austria, and Poland), attention is also paid to Denmark, France, Hungary, Greece, Russia and, last but not least, Nigeria. For each individual country, the author describes in which legislative act the anticorruption measures are embodied, what is the substance of bribery-based criminal offences (including a description of the substance of bribery crime in the private sector), what penalties can be imposed and how long the sentence of imprisonment may be, what the legal definition of the terms bribery and public official is, and presents other interesting issues, if any, that are worth mentioning.

The last chapter shortly deals with the prevention of corruption. The author briefly evaluates the Czech government's anticorruption strategy and ponders on the ten anticorruption commandments and their implementation in the Czech Republic. When describing these preventive measures, the author dedicates a separate subchapter to a measure consisting in the possibility of introducing reliability tests and emphasises their considerable preventive effects. In addition, the author also briefly ponders on the institute of "agent provocateur" and the question of its applicability in Czech law.

In the conclusion, the author summarises his findings and recapitulates his *de lege ferenda* contemplations, while simultaneously answering the question asked in the introduction of the dissertation – whether it is possible at all to prevent corruption and achieve a non-corrupt society.

The dissertation also contains annexes, such as an overview of definitions of (or attempts to define) corruption as defined by individual authors as well as national and international institutions; an overview of legislative provisions related to corruption as used in former laws (Act No. 117/1852 ř.z. on criminal offences, infractions and misdemeanours; Act No. 19/1855 ř.z., the military criminal code on criminal offences and infractions; or Act No. 178/1924 Sb. on bribery and against violations of official secrecy) and, in addition, the texts of documents drafted in the recent years, such as the text of the Open Government Declaration, and individual recommendations from the GRECO evaluation rounds addressed to the Czech Republic. Furthermore, the annexes include a table outlining the latest assessment of corruption with the rankings of individual countries (for 2011) under the Corruption Perceptions Index of Transparency International. For the sake of completeness, the annexes

also include charts describing the dynamics of the number of individual bribery offences in the Czech Republic according to the police statistics and criminality statistic yearbooks for the years 1997 to 2011, etc.